UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/587
15 June 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 587

Case No. 666: DAVIDSON

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Ioan Voicu; Mr. Francis Spain;

Whereas, on 17 March 1992, Danielle Davidson, the widow of David Patrick Davidson, a former staff member of the Office of the United Nations High Commissioner for Refugees, hereinafter referred to as UNHCR, and his children, Diana and Ian, filed an application requesting the Tribunal:

"2.1 To decide that it is competent to hear and pass judgement upon the present application in accordance with article 2 of its Statute and that, further, the application is receivable under article 7 of its Statute;

...

2.3 To rescind the Secretary-General's decision of 29 November 1991, communicated to Applicants' counsel by letter of 10 December 1991 (...) to maintain his original decision denying the Applicants' claim for compensation under article 10 of Appendix D to the Staff Rules, and, by implication, also that original decision;

2.4 To find that on the evidence available the death of the late David P. Davidson is attributable to the performance of official duties on behalf of the United Nations;

2.5 To order the Respondent to pay the Applicants compensation as provided for in staff rule 106.4 and in article 10 of Appendix D to the Staff Rules;

2.6 To order the Respondent to pay to each of the Applicants compensation in an amount of US$3,000 in respect of the financial and moral prejudice caused to them by the persistent dilatoriness with which his services processed their claim for compensation, exacerbated by wrong advice given them by his services in regard to procedures to be followed."

Whereas the Respondent filed his answer on 25 September 1992;

Whereas the Applicant filed written observations on 12 October 1992;

Whereas, on 14 May 1993, the President of the Tribunal ruled that no oral proceedings would be held in the case.

Whereas the facts in the case are as follows:

The Applicant, Danielle Davidson, is the widow of David Patrick Davidson, who was a staff member of UNHCR from 3 January 1966 until 23 December 1987, when he died at age 50, in Bangui, Central African Republic. The application is filed also on behalf of his dependent children, Diana and Ian.

In September 1986, the Applicant's husband had been assigned to Bangui as Senior Programme Officer for a period of two years. From 1 November 1987, he was also Acting Chargé de Mission, a task he had been in fact performing for months before then.

The Applicant's husband died on 23 December 1987, in his home in Bangui. The death certificate, issued by a local doctor, Xavier Coulaud, stated that the Applicant's husband had died of natural causes at about 3 a.m., after a cardiac crisis.

In a letter dated 11 March 1988, the Applicant submitted to the High Commissioner a claim for compensation under Appendix D to the Staff Rules. She argued that her husband's death was attributable to the performance of official duties on behalf of the United

Nations. She also explained that her husband, although physically exhausted and under stress, had not taken care of his health.

On 11 April 1988, the Head, Personnel Service, sent the Applicant's claim to the UN Joint Medical Service at Geneva for advice, adding that the High Commissioner had asked "that special attention be given to Mrs. Davidson's statements regarding the absence of adequate medical facilities in the Central African Republic, which she considers to be a major contributing factor to the untimely death of her husband." On 15 April 1988, the Director of the UN Joint Medical Service at Geneva replied that "it would seem difficult to envisage the imputability to service of her husband's death" and that he required "more precise medical information" to prepare a report for the Advisory Board on Compensation Claims (ABCC).

On 9 May 1988, the Applicant's claim was transmitted to the Acting Secretary of the ABCC at Headquarters.

In his report dated 7 October 1988, the Director of the UN Joint Medical Service at Geneva stated that in his opinion, "it was either a serious infarction or, more likely, a pulmonary embolism, given the trouble with the lungs on the day before he died." (Translation by the Tribunal).

At its 321st meeting, held on 26 October 1988, the ABCC recommended to the Secretary-General that the claim for compensation under Appendix D to the Staff Rules be denied on the ground that:

> "Having reviewed the medical reports on the incident which stated the cause of death as myocardial infarction, ... the death could not be deemed as attributable to the performance of official duties on behalf of the United Nations;"

On 31 October 1988, this recommendation was accepted by the Secretary-General and on 15 November 1988, the Applicant was informed that her claim had beed denied.

On 30 November 1988, the Applicant requested the Secretary-General to review his decision. On 24 January 1989, the Assistant Secretary-General for Human Resources Management replied that:

"Although deeply sympathetic to you and your family, the Secretary-General's decision was taken following full examination of your claim by the Advisory Board on Compensation Claims, which considered that the cause of death (myocardial infarction) could not be considered as attributable to the performance of official duties on behalf of the United Nations. I should advise you that so many factors are regarded as being causative of myocardial infarction that the consensus in compensation medicine holds that it can only be regarded as being work-related if some very acute and unusual stress occurred within a few hours of the attack. Secondly, your husband did go voluntarily to Bangui, knowing that the medical facilities were not as good as in his home country.

You claim that your husband's death 'resulted as a natural incident of performing official duties on behalf of the United Nations in terms of paragraph (b)(i) of article 2 of Appendix D as well as being directly due to his presence, in accordance with an assignment of the United Nations, in an area involving special health hazards, and having occurred as the results of such hazards, in terms of paragraph (b)(ii) of that article.' If you can provide new and/or additional information to substantiate this claim, the Secretary-General would be prepared to reopen the case under article 9 of Appendix D to the Staff Rules."

On 2 March 1989, the Applicant lodged an appeal with the Geneva Joint Appeals Board (JAB).

On 15 March 1989, the Assistant Secretary-General for Human Resources Management advised the Applicant's counsel that if "additional, or new, information" could be submitted to the ABCC to substantiate the Applicant's claim ("such as the detailed events of Mr. Davidson's schedule prior to the unfortunate accident"), the Secretary-General would be prepared to reopen the case, under article 9 of Appendix D.

On 26 April 1989, the Applicant requested the Secretary of the ABCC to reopen the case, arguing that "the facts of the case, as presented first to the Secretary-General and subsequently to the Joint Appeals Board, by themselves, and without any additional information, fully warrant the grant to [the Applicant] and her children of the compensation foreseen in staff

rule 106.4 and in appendix D to the Staff Rules." She added that, at the time of his death, and for some time prior thereto, her husband had been "discharging the duties of two posts", those of Acting Chargé de Mission in Bangui, and his normal duties as Programme Officer.

On 16 June 1989, the Acting Secretary of the ABCC informed the Applicant that:

> "...unless new medical reports are obtained, such as from the attending physicians who have treated the late Mr. Davidson in the course of his assignment with UNHCR, in Bangui, prior to his death, the Secretary-General would not be able to consider reopening the case."

On 5 July 1989, the Applicant asked the JAB to proceed with the appeal she had lodged. The Board adopted its report on 16 March 1990. Its recommendations read as follows:

> "Recommendations
>
> 42. From the foregoing, the Panel recommends that the Appellant's claim for compensation under Appendix D to the Staff Rules be reopened. This could be done under article 9 of Appendix D, as suggested by [the Assistant Secretary-General, OHRM] in his letters of 24 January 1989 and 15 March 1989, or by having the ABCC reconsider the case.
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> 43. It is noted that article 9 of Appendix D provides for reopening of cases. It is also noted that article 17 of Appendix D, which provides for constitution of a medical board, does not refer to incidents of death, but since the Appellant has submitted a number of facts in support of her contention that the cumulative effect of chronic stress plus unusual exertion is a recognized cause of heart attacks (...) which, in the opinion of the Panel, deserves a measured judgement from a competent medical board, the constitution of such a medical board may be considered. The Panel would suggest that the choice of course of action be given to the Appellant, with clear statement of the implications of the choice. For example, under article 17 of Appendix D, the Appellant has the right to have a medical practitioner of her choice, but must pay costs if her case is rejected. Within the ABCC,

the constitution of a medical board is decided by the United Nations.

44. The Panel is convinced that the Appellant has provided sufficient new evidence to reopen the case. It therefore recommends that the Appellant organize this information into a revised presentation, taking into account the requests for supplementary facts from the Respondent.

45. The Panel also recommends that the Respondent inform the Appellant in clear terms of the types of information it would need for a revised review of the case and that it keep the demands for information within reasonable bounds, remembering that the deceased was living in an area with limited medical facilities.

46. The Panel further recommends that the medical consensus used by the ABCC in this case be reconsidered in terms of the implications of cumulative stress conditions.

47. The Panel finally recommends that the lack of medical facilities for treating immediate medical emergencies be considered as forming a special hazard under paragraph (b)(ii) of article 2 of Appendix D, in line with the classification of duty stations category III by the UNHCR."

In a letter dated 21 May 1990, the Acting Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, having re-examined her case in the light of the JAB report had decided to reopen her case under article 9 of Appendix D and to constitute a medical board in accordance with article 17 of Appendix D if the Applicant should so request. The Applicant was asked to submit to the ABCC additional medical information.

On 25 June 1990, the Applicant advised the Secretary of the ABCC that she believed that the case could be determined "on the strength of the guidance provided by the JAB." Should it be considered necessary to constitute a medical board, she would choose a physician to represent her. Furthermore, she was not in a position to give more medical information. The UN Medical Director at Geneva had advised her that he had sent her late

husband's entire medical file to UN Headquarters. Her husband had never been treated by a physician during his assignment in Bangui.

At its 333rd meeting held on 27 September 1990, the ABCC decided to reopen the case and recommended the constitution of a Medical Board. Such a Medical Board was constituted and on 27 August 1991, the Director of the UN Joint Medical Service in Geneva transmitted its report to the UN Medical Director.

The report of the Medical Board, in its relevant parts, states:

"...

1. As to the first question ('What diagnostic hypotheses may be put forward?'):

The Board took the view that the likeliest diagnostic hypothesis was myocardial infarction with arrhythmia and cardiogenic shock.

The Board notes that, according to Mrs. Davidson, about 90 minutes elapsed between the onset of the symptoms (pains in the thorax) and death.

2. As to the question whether Mr. Davidson's condition could be considered the result of a special hazard to his health to which he was exposed by reason of his duties:

The Board took the view that:

(a) Mr. Davidson's condition was the result of pre-existing coronary atherosclerosis related to personal risk factors and to the existence of personal behavioural characteristics constituting a predisposing risk factor;

(b) The excessive workload mentioned by Mrs. Davidson (the exact extent of which cannot be gauged from the information available on file) may have constituted an additional factor;

(c) However, this additional factor cannot be considered of sufficient weight for Mr. Davidson's death to be deemed to have resulted as a natural incident of performing official duties, within the

meaning of article 2, paragraph (b)(i), of Appendix D to the Staff Rules.

3. As to the question whether the conditions of treatment were such a determining factor in his death that if they had been better, death could have been avoided:

The Board took the view that the chances of survival would have been improved by appropriate intervention, which, according to Mrs. Davidson, was not effected by the doctor called to treat Mr. Davidson.

The lack of appropriate intervention therefore constituted an unfavourable factor in the evolution of Mr. Davidson's condition, but it is not possible to affirm that appropriate intervention would definitely have prevented death, or that it would have had no effect on the evolution of the condition.

The lack of appropriate intervention was a factor constituting a special hazard to health, within the meaning of article 2, paragraph (b)(ii), of Appendix D to the Staff Rules, in so far as it was related to the difficult conditions in Bangui in 1987. There being no medical report by the doctors who treated Mr. Davidson, it is impossible to ascertain the precise reasons for the lack of appropriate intervention, but it is acknowledged that conditions in Bangui were difficult.

Nevertheless, this special hazard does not constitute the sole cause of Mr. Davidson's death, but should be regarded as an aggravating factor which should not be underestimated, but whose importance cannot be quantified.

4. As to the question whether, consequently, the international Organization should be deemed to incur liability for the onset of the condition and the occurrence of the death of Mr. Davidson:

The Board took the view that the question cannot be addressed comprehensively in those terms."

On 14 November 1991, the ABCC, at its 342nd meeting, recommended to the Secretary-General that his original decision to deny the Applicant compensation under article 10 to Appendix D be maintained. This recommendation was approved by the

Secretary-General on 29 November 1991. On 10 December 1991, the Secretary of the ABCC informed the Applicant thereof.

On 17 March 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. There was no valid reason given for the decision to deny her compensation for the death of her husband. The decision was tainted by bias and did not deal with the special hazards of the duty station as required by article 2(b)(ii) of Appendix D.

2. The Administration unduly delayed the consideration of the appeal.

Whereas the Respondent's principal contentions are:

1. Acceptance by the Secretary-General of the Medical Board's recommendation that Mr. Davidson's death was not attributable to the performance of official duties was a reasonable exercise of discretion.

2. Mere assertion of prejudice will not invalidate discretionary decisions. The burden of establishing prejudice rests on those asserting it. The Applicant has failed to discharge that burden.

3. The delay in this case was caused by a desire to obtain and review all evidence with a view to attempting to fairly adjudicate upon the Applicant's claim. Given the lack of medical information in this case, this attempt was not unreasonable.

The Tribunal, having deliberated from 2 June to 15 June 1993, now pronounces the following judgement:

I. The Applicant is the widow of a United Nations staff member. He had served with the United Nations since 1966 and at the time of his death on 23 December 1987, was a United Nations High Commissioner for Refugees (UNHCR) Programme Officer in Bangui,

Central African Republic. Because of a temporary vacancy in the post, for some time he had been also Acting Chargé de Mission. The Applicant, on her own behalf and on behalf of two dependent children, asks that the Tribunal rescind a decision of the Respondent communicated to her by a letter dated 10 December 1991, denying the Applicant's claim for compensation under article 10 of Appendix D to the Staff Rules. The central issues with respect to the Applicant's claim arise under article 2(b)(i) and (ii) of Appendix D, which provide:

> "The following principles and definitions shall govern the operation of these rules:
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> ...
>
> (b) ... death, ... of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the United Nations ... when:
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> (i) The death, ... resulted as a natural incident of performing official duties on behalf of the United Nations; or
>
> (ii) The death, ... was directly due to the presence of the staff member, in accordance with an assignment by the United Nations, in an area involving special hazards to the staff member's health or security, and occurred as the result of such hazards; ..."

II. The Applicant asserts that her husband's death was attributable to the performance of official duties on behalf of the Organization as it resulted from "chronic and acute stress ... from the cumulative effect of documented excessive professional work and worry and unusual exertion preceding the death." The Applicant also invokes article 2(b)(ii) of Appendix D on the ground that the characteristics of his duty station constituted a "special health hazard." Specifically, she contends that her husband's duty station, at the time of his death, lacked the most elementary medical facilities and an adequate infrastructure and personnel for serious emergencies, such as heart attacks. Nothing in the record

indicates that this contention by the Applicant was or is disputed by the Respondent.

III. The Applicant's claim was first denied by a letter dated 24 January 1989, from the Secretary of the Advisory Board on Compensation Claims (ABCC) which stated, without explanation or reasons, that the ABCC considered that the death could not be attributed to the performance of official duties. Subsequently, in response to further submissions by the Applicant, her claim was forwarded to the JAB which recommended, inter alia, that the matter be reopened, that a Medical Board be convened, that the implications of cumulative stress conditions be taken into account and that the lack of medical facilities for treating immediate medical emergencies at the duty station be deemed a "special hazard" under article 2(b) (ii) of Appendix D. In addition, the JAB, in a section of its report entitled "Special Remarks", commented on the merits of the case. The JAB was critical of the use of excessively narrow criteria in determining work-related or service-incurred death. It also described as inadequate, in cases such as the one before it, ABCC reports, because of their uninformative nature.

IV. Following the JAB report, the Respondent reopened the case and referred it to the ABCC, which recommended the establishment of a Medical Board. This recommendation was adopted by the Respondent. The Medical Board issued its report on 4 July 1991. The Tribunal notes that the JAB raised a question regarding the applicability of the Medical Board procedure under article 17 of Appendix D in cases involving death. In the Tribunal's view, the terms "injury or illness" as employed in article 17, comprehend both fatal and non-fatal cases of injury or illness. Hence, medical boards are appropriate in such cases.

V. There is no indication of exactly what, if any, medical evidence was examined by the Medical Board. Its report notes that,

while it examined and discussed "the file and the rules governing compensation..." (emphasis added), there was "no medical report by the doctors who treated [the Applicant's husband] on 23 December 1987 that describes the clinical findings and the treatment provided...". The Tribunal expresses, parenthetically, its surprise at the Medical Board's reference to "doctors who treated [the Applicant's husband] on 23 December 1987", since it clearly appears from the file that the only doctor involved was Dr. Xavier Coulaud, who was present at the death and who signed the death certificate. He was, apparently, the only doctor available to come to the Applicant's home while her husband was suffering his heart attack. Nothing in the file indicates clinical findings by that doctor. All that appears is a letter written by him, simply expressing the belief that death was caused by a heart attack. It does not appear that the Medical Board had the report of an autopsy, if one was performed.

VI. The Applicant stated that on 22 December 1987, her husband had come home from his office in mid-afternoon, exhausted. She said that "he took his meal quickly and left home again to attend an official reception in the presence of the Head of State when he realized that no other UNHCR official was available... When he returned home, he collapsed and died in the presence of a doctor who ran out of means to save him. [The doctor] could only attempt a mouth-to-mouth resuscitation and a cardiac massage." The exact time when this occurred on 23 December 1987, is not clear from the file; death apparently occurred at about 3 a.m. The Medical Board noted that, according to the Applicant, about 90 minutes elapsed between the onset of her husband's chest pain symptoms and death. The Medical Board took the view that "the likeliest diagnostic hypothesis" was a fatal heart attack.

VII. The Tribunal has great difficulty understanding how, in the total absence of medical evidence, the Medical Board could conclude that there was a "pre-existing coronary atherosclerosis." To be

sure, there was ample evidence of personal risk factors and behavioural characteristics. But those factors and characteristics all seemed to be intensely work-related as the decedent was plainly dedicated both physically and emotionally to his UNHCR work to an extraordinary degree. He devoted long hours on a daily basis, including week-ends, to his own duties and was also performing, on a temporary basis, the duties of the Chargé. He was also sparing in the amount of annual leave taken by him.

VIII. The Medical Board recognized that the decedent's excessive workload, which it was unable to quantify, might have constituted an additional factor to the above-mentioned "pre-existing coronary atherosclerosis". It did not consider, however, this additional factor to be of sufficient weight for the "death to be deemed to have resulted as a natural incident of performing official duties, within the meaning of article 2, paragraph (b)(i), of Appendix D..." (emphasis added). The Tribunal does not consider these quoted words as an expression of a medical opinion, but rather as a legal opinion on the meaning of article 2(b)(i). Such an opinion by a Medical Board, being beyond its competence, provides no basis on which either the ABCC or the Respondent could rely.

IX. The Medical Board next turned its attention to "whether the conditions of treatment were such a determining factor in his death that if they had been better, death could have been avoided" and whether the decedent's "condition" could therefore, be considered "the result of a special hazard to his health to which he was exposed by reason of his duties." The Medical Board was of the view that the chances of survival would had been improved by appropriate intervention. The Medical Board appears to have recognized that, because of difficult conditions in Bangui at the time, a special hazard to health existed since facilities were lacking for the effective treatment of cardiac emergencies. Curiously, the Medical Board appears to have regarded article 2(b)(ii) of Appendix D as calling upon it to determine whether the lack

of appropriate intervention, itself, was a special hazard to health, rather than whether conditions in the area constituted such a hazard. The Medical Board thought in this connection, that it was required to determine the precise reasons for the lack of appropriate intervention. While finding that the lack of intervention was a special hazard to health, the Medical Board concluded that, in the absence of a medical report, it was unable to ascertain the precise effect of the absence of such intervention.

Taking the Medical Board's findings as to the existence of a special hazard within the meaning of article 2(b)(ii), together with the other evidence referred to above, the Tribunal finds that the decedent was in an area involving special hazards to his health within the meaning of article 2(b)(ii) because of the unavailability of facilities and personnel for effective treatment of a cardiac emergency.

X. The Medical Board also concluded that the special hazard, though not the sole cause of death, was an aggravating factor "which should not be underestimated, but whose importance cannot be quantified." The Medical Board then entered again into the field of legal interpretation by attempting to answer the ultimate legal question of whether the Organization should be deemed to incur liability for the onset of the condition and the death of the decedent. The Medical Board felt that it was unable to provide a comprehensive answer in those terms. Instead, it stated that atherosclerosis (the condition it assumed existed) and heart attack cannot be deemed to have resulted as a natural incident of performing official duties. It conjectured that an excessive work load "probably" constituted only an additional factor and "probably" was not the principal cause of the disease. Finally, the Medical Board determined that the special hazard it had previously found adversely affected the decedent's chances of survival.

XI. Based on the Medical Board report, but without any further analysis or explanation, the ABCC reiterated its recommendation to deny the Applicant's claim. The Respondent approved that recommendation.

XII. The Tribunal has consistently held that it will not rescind decisions by the Respondent denying compensation which are based on proper Medical Board reports where there is no showing of procedural irregularity, mistake of fact or law, or of arbitrary or extraneous factors flawing the decision. In particular, the Tribunal, having no medical competence, does not enter into medical questions. But the Tribunal has pointed out that Medical Board members, when they address legal questions instead of confining themselves to medical opinions on medical questions, are acting beyond their competence. (Cf. Judgement No. 523, Labben (1991), para. III). The Tribunal has indicated above, instances in which the Medical Board, as in this case, has involved itself in and purported to deal with legal questions for which it lacks competence. Such legal views have no place in a Medical Board report. Otherwise, the legal views expressed therein, tend to become so entangled with its medical views, that eventual reliance on the Medical Board report by the Respondent will result in his decision being impermissibly influenced by physicians' legal views. Uncritical reliance on such a Medical Board report implies adoption of the physicians' legal views. The Tribunal finds that to be the case here, because of the nature and extent of the Medical Board's preoccupation with legal issues.

XIII. The Medical Board report was flawed in another respect, namely, the absence of any medical evidentiary support for the finding (which to the Tribunal appears to be essentially a guess) that a pre-existing condition of atherosclerosis existed, outweighing the effect of the possible additional factor of an excessive workload combined with the work-related behavioural characteristics of the decedent. Although the Tribunal itself is

surely not qualified to make a medical judgement on this matter, and will not do so, it can and does find that the Respondent's decision was mistaken, since it was based entirely on the Medical Board report which was unsupported by the evidence.

XIV. With respect to whether under article 2(b)(ii) of Appendix D the death of the Applicant's husband can be deemed attributable to the performance of official duties, the Tribunal has found above, that Bangui was an area involving special health hazards. As to whether the decedent's death occurred as a result of such hazards, the Respondent evidently relied on the Medical Board's finding that the special hazard was not the "sole cause" of death, but an aggravating factor which should not be underestimated. The Tribunal holds that the interpretation of article 2(b)(ii), on which the Respondent's decision rests, is unduly restrictive. In cases of heart attack deaths, it would be extremely difficult, if not impossible, to establish with absolute certainty that a special hazard of the type involved here, i.e., the unavailability of adequate facilities and personnel for dealing with cardiac emergencies, is the sole cause of death. In such situations, how does one prove that an individual would have survived if the facilities and personnel were available? If the facilities and personnel are available and the individual survives, the question is moot; if he does not, it is academic. At best, an element of conjecture would be present.

XV. The consent of a staff member, such as the Applicant's husband, to assignment to an area of special hazards provides no basis for a contention by the Respondent that the staff member thereby assumed the risks involved. Article 2(b)(ii) of Appendix D would make no sense at all if consent to an assignment that the Secretary-General is authorized to make under the Staff Regulations were held to be tantamount to assumption of the risk of special hazard by the staff member. Nor, when a staff member is assigned to an area of special hazards would it be fair to shift the

associated risks to the staff member by establishing unreasonably restrictive standards for the application of article 2(b)(ii). The Tribunal does not understand that provision to be aimed at creating unreasonably difficult barriers under Appendix D in cases such as this. If, as here, a Medical Board properly finds the existence of a special hazard, constituting an aggravating factor, which decreased the chances of survival, that is tantamount to a finding that the special hazard played enough of a role in the chain of causation to determine that death occurred as a result. The Tribunal concludes that, in the circumstances of this case, the death occurred under article 2(b)(ii), as a result of the special hazard of unavailability of adequate facilities and personnel in Bangui for dealing with cardiac emergencies. Accordingly, the Respondent's decision must be rescinded and the Applicant is entitled to compensation under staff rule 106.4 and Appendix D.

XVI. In the Tribunal's view, the Medical Board report, the report of the JAB, and the ABCC recommendations in this case have brought into sharp focus significant procedural matters which should be addressed by the Administration. The Tribunal will be concerned if, when Medical Boards are established in the future, they are not cautioned against attempting to provide legal opinions and attempting to interpret applicable Regulations and Rules. Indeed, the <u>medical questions</u> to be investigated and answered by a Medical Board should be defined in an appropriate manner by the Administration after consultation with the Applicant. When Medical Boards are left to define their own terms of reference, it may become an open invitation for the creation of problems of the sort that the Tribunal has commented on in this case. In addition, unless ABCC reports set forth in reasonable detail their findings of fact and conclusions and explain the reasons for their recommendations, the Tribunal will remand the case to the ABCC for such a report. In the absence of such findings, conclusions and reasons, the Tribunal may be impeded and unable to adequately review decisions of the Secretary-General. Unexplained adoption by

the Secretary-General of unexplained recommendations by the ABCC, especially in the context of medical questions, is a source of sufficient difficulty in the administration of justice to warrant the procedure indicated above.

XVII. For the foregoing reasons, the Tribunal orders that the decision of the Respondent dated 10 December 1991, be rescinded and the Respondent is ordered to compensate the Applicants, i.e., Danielle Davidson, the widow and Diana and Ian, the dependent children of the deceased staff member, in accordance with the provisions of staff rule 106.4 and article 10 of Appendix D to the Staff Rules, with interest at the rate of eight percent (8%) per annum from 1 February 1988, until the date of payment, to compensate for any undue delay.

XVIII. All other pleas are rejected.

(Signatures)

Jerome ACKERMAN
President

Ioan VOICU
Member

Francis SPAIN
Member

Geneva, 15 June 1993

R. Maria VICIEN-MILBURN
Executive Secretary